

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON (TACOMA)

LEXINGTON INSURANCE COMPANY;
HOMELAND INSURANCE COMPANY OF
NEW YORK; HALLMARK SPECIALTY
INSURANCE COMPANY; ASPEN
SPECIALTY INSURANCE COMPANY;
ASPEN INSURANCE UK LTD.; CERTAIN
UNDERWRITERS AT LLOYD’S, LONDON
AND LONDON MARKET COMPANIES
SUBSCRIBING TO POLICY NO. PJ193647;
CERTAIN UNDERWRITERS AT LLOYD’S
LONDON SUBSCRIBING TO POLICY NO.
PJ1900131; CERTAIN UNDERWRITERS AT
LLOYD’S, LONDON AND LONDON
MARKET COMPANIES SUBSCRIBING TO
POLICY NO. PJ1933021; CERTAIN
UNDERWRITERS AT LLOYD’S, LONDON
SUBSCRIBING TO POLICY NOS. PD-10364-
05 AND PD-11091-00; AND ENDURANCE
WORLDWIDE INSURANCE LIMITED (T/AS
SOMPON INTERNATIONAL) SUBSCRIBING
TO POLICY NO. PJ1900134-A,

Plaintiffs,

vs.

CINDY SMITH, in her official capacity as
Chief Judge for the Suquamish Tribal Court,
ERIC NIELSEN, in his official capacity as
Chief Judge of the Suquamish Tribal Court of
Appeals, BRUCE DIDESCH, in his official
capacity as Judge of the Suquamish Tribal
Court of Appeals, and STEVEN AYCOCK, in
his official capacity as Judge of the Suquamish
Tribal Court of Appeals,

Defendants.

Case No. 3:21-CV-5930

**STIPULATION REGARDING
INTERVENTION BY THE
SUQUAMISH TRIBE, SERVICE
OF COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF ON THE
DEFENDANTS, AND BRIEFING
FOR SUMMARY JUDGMENT**

The Plaintiffs, the Defendants, and the proposed intervenor The Suquamish Tribe (“the Tribe”), by themselves or by and through their respective counsel of record, state as follows:

WHEREAS, on June 4, 2020, the Tribe, as well as its wholly-owned economic development arm Port Madison Enterprises, initiated a lawsuit in the Suquamish Tribal Court against various insurance companies who are also the Plaintiffs in this federal lawsuit (hereafter the Plaintiffs in this action, who are also defendants in the Tribal Court Action discussed below, shall be referred to herein as the “Insurers”). The underlying lawsuit is entitled *The Suquamish Tribe et al. v. Lexington Insurance Company, et al.*, and bears case number 200601-C (“Tribal Court Action”). Defendant Chief Judge Cindy Smith presides over the Tribal Court Action.

WHEREAS, on or about August 17, 2020, one of the Insurers, Lexington Insurance Company (“Lexington”), moved to dismiss the Tribal Court Action, arguing a lack of subject matter and personal jurisdiction. The other Insurers joined Lexington’s motion or filed their own motions to dismiss on jurisdictional grounds.

WHEREAS, following briefing and argument, Chief Judge Smith denied the Insurers’ motions to dismiss by written order dated on March 16, 2021.

WHEREAS, with permission of the Suquamish Tribal Court of Appeals, the Insurers were granted permission to appeal the order in the Tribal Court Action denying the motions to dismiss. The appeal was assigned to Defendants Chief Judge Eric Nielsen and Judges Bruce Didesch and Steven Aycock, judges who sit on the Tribe’s Tribal Court of Appeals.

WHEREAS, following briefing and argument, the Suquamish Tribal Court of Appeals issued a written decision, dated September 29, 2021, and corrected by an amended decision

dated October 7, 2021, denying the appeal of the Insurers and affirming the jurisdiction of the Tribal Court over the Insurers.

WHEREAS, on October 13, 2021, the Tribe and Port Madison Enterprises filed a first amended complaint in the Tribal Court Action. The Insurers filed answers thereto on December 1, 2021.

WHEREAS, on December 22, 2021, the Insurers filed the Complaint for Declaratory and Injunctive Relief (“Complaint”) in this action, against Defendants Chief Judge Smith, Chief Judge Nielsen, and Judges Didesch and Aycock, in their official capacities as judges of the Suquamish Tribal Court and Court of Appeals. In this case, the Insurers challenge the Tribal Court and Tribal Court of Appeals rulings on jurisdiction, and allege that the Defendants “continue to subject the Insurers to the unlawful jurisdiction of the Tribe and its tribal court.” The Insurers have also filed a motion for preliminary injunction in this case, currently scheduled to be heard on April 15, 2022.

WHEREAS, counsel for the Insurers and counsel for the Tribe have discussed how best to proceed in this case. The Tribe has expressed that it has a significant interest in defending the jurisdiction of its Tribal Court. As such, the parties have agreed on a manner of proceeding that would allow intervention by the Tribe and an expeditious handling of this federal court action.

THEREFORE, the Insurers, the Defendants, and proposed intervenor the Tribe, by themselves or through their respective counsel of record, stipulate as follows:

1. Because the Tribe asserts it has a direct interest in defending the jurisdiction of the Tribal Court and the Tribal Court of Appeals, and that it is the real party in interest, the Tribe will move to intervene as a defendant in this Action. Such intervention will be for the limited purpose of defending the jurisdiction of the Tribal Court and the Tribal Court of Appeals with respect to the Tribal Court Action, and the Insurers agree that the intervention does not waive the Tribe's sovereign immunity as to any other issue. For the avoidance of doubt, the Tribe agrees to submit to the jurisdiction of this Court (and in the event of appeals by any party, the Ninth Circuit Court of Appeals and the United States Supreme Court) solely for the purpose of the federal adjudication of the jurisdiction of the Tribal Court and the Tribal Court of Appeals.
2. In order to permit an efficient procedure to effect service of process of the Summons and Complaint, answering the Complaint, and execution of the present Stipulation, an attorney from the Office of the Tribal Attorney who is not counsel of record in the Tribal Court Action will communicate with the Defendants solely for the purpose of discussing with them acceptance of service of the Summons and Complaint in this action, answering the Complaint, and the details of this Stipulation. There will not be any communication between the Office of the Tribal Attorney and the Defendants regarding the substance of the Tribal Court Action other than as stated in this stipulation. None of the Plaintiffs will use the contact and communications regarding acceptance of service, answering the Complaint, or this Stipulation by the attorney from the Office of the Tribal Attorney to allege a conflict of interest or improper ex

parte communication in the Tribal Court Action. The Plaintiffs, the Defendants and the Tribe agree that the sole purpose for these communications between the attorney with the Office of the Tribal Attorney and the Defendants will be to effectuate service of process, answering the Complaint, and to prepare the present Stipulation.

3. Through their signatures below, the Defendants agree to accept service of the Summons and Complaint by email, which service shall be deemed sufficient. Counsel for the Tribe will provide the Insurers with email addresses for each of the Defendants for purposes of accomplishing this service.
4. Defendants will appear in this Action and file Answers to the Complaint, joining the Tribe's Answer. Counsel for the Tribe will not represent the Defendants. Consistent with this Stipulation, and without otherwise waiving its sovereign immunity as to any other issue, upon intervention the Tribe will defend in this case against the Insurers' challenge to Tribal Court jurisdiction in the Tribal Court Action. The Defendants will have no obligation to respond to any motions filed in this case; rather, as indicated above, the matter will be defended by the Tribe as intervenor. Defendants agree to abide by any ruling by the Court, subject to any appeal.
5. The Tribe, Port Madison Enterprises, and the Insurers agree and will stipulate to a stay of the Tribal Court Action pending entry of a final judgment in the present case and final resolution of any appeals that follow. Upon the granting of a stay by the Tribal Court, the Insurers will dismiss as moot their pending motion to stay in the Tribal Court Action, and their pending motion for preliminary injunction in this case.

6. The Parties agree that the Tribe and Defendants will file Answers to the Complaint by March 21, 2022, and if the Tribe and Defendants file any counterclaim with their Answers, the Insurers will file response(s) to such counterclaim(s) by April 11, 2022. The parties further agree to the following briefing schedule for cross-motions for summary judgment, subject to the Court's approval: cross-motions for summary judgment will be filed by May 2, 2022; responses to the cross-motions will be filed by June 3, 2022; and replies in support of the cross-motions will be filed by June 17, 2022.

Respectfully submitted,

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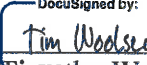
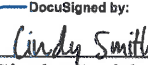
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Pursuant to RCW 9A.72.085, the undersigned certifies, under penalty of perjury under the laws of the United States of America and the State of Washington, that on the 16th day of March, 2022, the document attached hereto was delivered to the below counsel in the manner indicated:

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1 Defendant Steven Aycock, in his official
2 capacity as Judge of the Suquamish Tribal
3 Court of Appeals

4 Signed this 16th day of March, 2022, in Kansas City, MO.

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6 s/Gwendolyn Wall
7 Gwendolyn Wall, paralegal
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